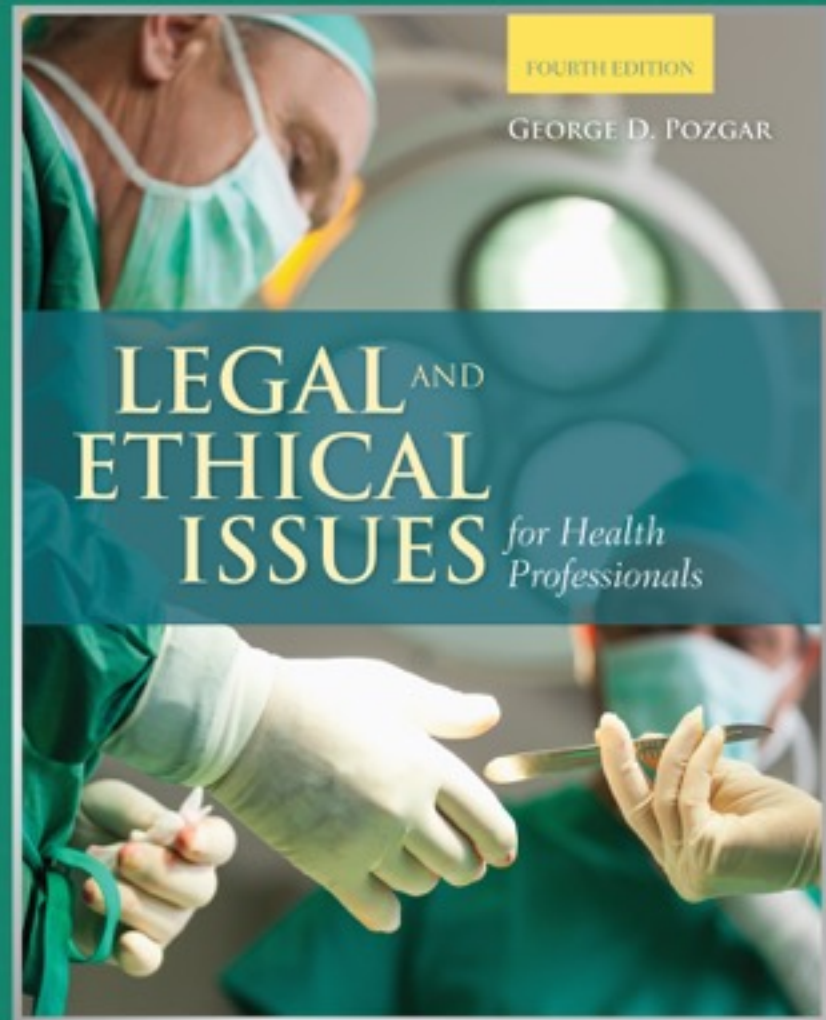


Chapter 11

Employee Rights and Responsibilities



Learning Objectives

- Describe and understand the rights of employees.
- Describe the responsibilities of employees in the workplace.
- Discuss what professionals can do to improve professional relationships.

EMPLOYEE RIGHTS

Fair Treatment and Employment at Will

- The employer or employee may terminate employment at any time unless there is:
 - A contract in place that specifies the terms and duration of employment
 - Public policy considerations
 - Implied covenant of good faith and fair dealing

An at-will prerogative without limits could be suffered only in an anarchy, and there not for long; it certainly cannot be suffered in a society such as ours without weakening the bond of counter-balancing rights and obligations that holds such societies together.

– Sides v. Duke

Public Policy Exceptions – I

Prohibiting Termination

- Public policy exception to the employment-at-will doctrine provides that employees may not be terminated for reasons contrary to public policy.
- Public policy originates with legislative enactments that prohibit discharge of employees.

Public Policy Exceptions – II

Prohibiting Termination

- Disability
- Age
- Race
- Creed
- Color

Public Policy Exceptions – III

Prohibiting Termination

- Religion
- Sex
- National origin
- Pregnancy
- Filing of safety complaints with OSHA

Freedom from Discrimination

- Employees have the right to be considered for a job on the basis of their skills and qualifications, without discrimination based on race, age, creed, or color.

Equal Pay for Equal Work

- Prohibits wage disparities based on sex.
- Prohibits discrimination in payment of wages for women and men performing substantially equal work in same establishment.
- Wages may be unequal as long as they are based on factors other than sex, for example:
 - Formalized seniority system
 - System that objectively measures earnings by quantity or quality of production

Refusal to Participate in Care

- Refusal to participate in elective abortion upheld.
- Refusal to participate in therapeutic abortion insubordinate.
- Pharmacists' refusal to fill prescriptions.

Caregiver's Right to Refuse

The nurse in the operating suite refuses to participate in an elective abortion.

Discuss how an organization might fairly address this dilemma.

Legal and Ethical Issues

- Legal issues
 - Employee's right to religious freedom
 - Organization's responsibility to provide care
- Ethical issues
 - Nonmaleficence (first, to do no harm)
 - Professional codes of ethics

Question Patient Care

- Public policy clearly mandates an *obligation to serve the best interests of patients*.
- Persistence to get the proper treatment for the patient is an absolute duty.
- Case Study:
 - Paving Her Way to Heaven

Change Your Physician – I

Physician failed to return the nurse's calls. Because of the patient's deteriorating condition, the family contacted the nurse. After the nurse advised the patient's family as to her concerns, a member of the patient's family asked her what they should do. The nurse advised that she would reconsider their "choice of physicians." The nurse was terminated because she had advised the patient's family to consider changing physicians.

Change Your Physician – II

- What action might the hospital might take?
- What should the jury do? Discuss your answer.
- Discuss the legal issues in this case.
- Discuss the ethical issues in this case.
- What was the court's decision?

Change Your Physician – III

The North Carolina Court of Appeals held that the nurse stated a claim for wrongful discharge in violation of public policy. The nurse's termination for fulfilling her responsibilities as a practicing nurse violated state public policy and was a factual question for jury determination.

Freedom from Sexual Harassment

- Employees have a right to be free from sexual harassment.
- Sexual harassment includes:
 - Request for a sexual favour/s
 - Sexual advances as condition for employment
 - Unreasonably interfering with employee's work
 - Creating intimidating or offensive working environment

Treatment with Dignity and Respect

- Each employee has the right to be treated with dignity and respect and in a fair and constant manner by the employer.
- Employers must respond to employee complains and concerns regarding this right for decent treatment.

*One's dignity may be assaulted, vandalized, and
cruelly mocked, but it cannot be taken away
unless it is surrendered.*

– Author Unknown

Freedom from Intimidation

- Those in power often abuse that power through threats, abuse, intimidation, and retaliatory discharge. Employees have right to be protected from the abuse of others in the workplace.
- Employees who become targets of a vindictive supervisor often have difficulty in proving a bad-faith motive.
- Some states (e.g., Connecticut, Maine, Michigan, and Montana) have enacted legislation that protects employees from terminations found to be arbitrary and capricious.

Privacy and Confidentiality

- Health status privacy
- Fine line to protecting one's privacy
- Reality Checks
 - Your Mail Has Been Intercepted
 - Trust Is Pivotal to Success

Right to Family Medical Leave

- Employees have the right to take a medical leave of absence under the Family and Medical Leave Act of 1993.
- The act provides that employers must grant employee leave for birth/care of child, care of immediate family member with serious health condition, or inability to work because of personal health condition.

Whistleblowing

- Employees have the right and responsibility to report unethical conduct.
- Employers may not retaliate against employees for these disclosures.

Safe Environment

- Employees have a right to work in a safe environment.
- This requires an employer to provide correct safety conditions, including appropriate equipment and signage posted as required in hazardous areas.

Unemployment Compensation

- Employees have a right to unemployment compensation, as well as workers' compensation for injuries resulting from the employer's work environment.

Employee Responsibilities – I

- Show compassion.
- Comply with state and federal regulations.
- Comply with hospital policy.
- Comply with job descriptions.
- Honor patient wishes.
- Maintain confidentiality.
 - Compliance officer and confidentiality

Employee Responsibilities – II

- Adhere to safe practices.
 - Failure to comply with hand hygiene guidelines
- Adhere to professional standards.

Employee Responsibilities – III

- Maintain professional relationships.
 - Shoot the consultant
 - Sexual harassment
 - Nurse's relationship with patient
 - Physician's inappropriate house call
 - Avoid relationships with a patient's spouse

Employee Responsibilities – IV

- Report unethical behavior.
- Protect patients from harm.
- Report patient abuse.
- Work with team spirit.
 - Multidisciplinary approach to patient care

Maintain Professional Competencies

- Professional must have current understanding of one's area of specialization and practice.
- Education is a legal necessity in order to be in conformity with the national standard of care of one's profession.
- Every professional is responsible to be current in his or her knowledge and skills.
 - Professional literature
 - Attending continuing education programs
 - Mentoring

Helpful Advice – I

- Build consensus when solving problems.
- Do not blame others for your mistakes.
- Do not say the physician is not here when he or she is.
- Do not say the physician will soon be here when he or she has already left the building.
- Do not say that this will not hurt, when you know it will.

Helpful Advice – II

- Do not say that you are busy when you are not.
- Take responsibility for caring and communicating.
- Include the patient in the decision-making process.
- Take the time to explain to patients the risks, the benefits, and alternatives to each course of treatment.

Helpful Advice – III

- Show respect and sensitivity to the patient's needs.
- Listen to what the patient is saying without interruption.
- Do not make fun of a patient's decision-making capacity. Patients are human and have the frailties that all must someday endure.
- Prohibit others from demeaning and criticizing a patient's wishes because of his or her frail condition.

Helpful Advice – IV

- Remember that your feelings and those of family may be different from those of the patient.
 - It is the patient who faces the consequences of his or her decisions.
 - You are, therefore, responsible for considering the patient's wishes sacred and protecting the patient from those who would disregard them.

Caregiver's Pledge

- I will be compassionate.
- I will not neglect my duties and responsibilities.
- I will read instructions and follow protocols.
- I will seek verification of questionable orders.
- I will report concerns for patient safety (e.g., staffing concerns).

Caregiver's Pledge, cont'd

- I will not assume responsibilities beyond my capabilities.
- I will call for help when a patient's medical needs suddenly change.
- I will continuously improve my skills and participate in continuing education opportunities.

REVIEW QUESTIONS

- Describe the rights of employees.
- Describe under what circumstances an employee has a right to refuse to participate in a patient's procedure.
- Does a nurse have a right to question the care being rendered to a patient? Explain your answer.

REVIEW QUESTIONS, cont'd

- Is the employment-at-will concept appropriate in today's society?
- Describe the responsibilities of employees as described in this chapter.
- Describe what caregivers can do to build a spirit of teamwork and improve the quality of patient care.